

## **REMARKS**

Applicants have carefully reviewed the Office Action mailed on January 28, 2010. Applicants respectfully traverse (and do not concede) all objections, rejections, adverse statements, and adverse assertions made by the Examiner. Claims 1, 7, 37, 39, 40, 42 and 43 are presented for examination.

### **Claim Rejections Under 35 U.S.C. §103**

Claims 1, 37, 39, 40 and 43 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kline in U.S. Patent No. 5,376,094 in view of Savage in U.S. Patent No. 6,530,899. Applicants respectfully traverse the rejection.

Independent claim 1 recites that at least the first end of the swivel is disposed within the sheath when the shaft is in the second (e.g., where the snare loop substantially extends distally out of the distal end region of the sheath) position. Similarly, independent claim 37 recites that the swivel is disposed within the sheath when the shaft is in the second (e.g., where the snare loop extends distally out of the distal end region of the sheath) position. Likewise, independent claim 39 recites that at least the first end of the swivel is disposed within the sheath when the shaft is in the second (where the snare loop substantially extends distally out of the distal end region of the sheath) position.

Kline does not appear to teach or suggest the claimed invention. Instead, Kline only appears to disclose a crimp connection 58 between the snare loop 20 and the distal end of the cable 12 and, as seen in each of the Figures, the crimp connection is disposed distally out from the distal end of the sheath 14 when the snare loop is extended distally out of the distal end of the sheath 14. Savage does not overcome the shortcomings of Kline. For example, even if the connection of Savage was substituted for the crimp connector 58 of Kline, the resultant combination would still fail to teach or suggest the claimed structural arrangement of a swivel and a sheath. Based on these distinctions, Applicants respectfully submit that claims 1, 37, 39, 40 and 43 are patentable over the cited art.

Furthermore, the claimed structural arrangement of the swivel relative to the sheath may be desirable for a number of reasons. For example, page 4, lines 7-11 of the instant application recite:

However, it may be desirable for swivel 24 to be set back proximally a distance so that even when snare loop 22 is configured for severing a polyp (i.e., when snare loop 22 extends distally from sheath 12), swivel 24 still remains within sheath 12. This embodiment may help reduce the possibility that swivel 24 may catch or become "hung up" on sheath 12 when snare loop 22 is proximally retracted.

Thus, the claimed structural arrangement of the swivel relative to the sheath may help reduce the possibility that the swivel may catch on the sheath.

Nothing in the cited art appears to identify this problem or suggest the desirability of correcting it. Additionally, nothing in the art references appears to provide any motivation to altering the references in order to provide a structure that corrects this problem. Because of this, one of ordinary skill in the art would not be motivated to combine the cited art references and then alter the resultant combination (e.g., alter the combination so as to meet the claimed invention) in order to solve a problem not appreciated in the art.

Based on the forgoing, Applicants respectfully submit that the rejection of claims 1, 37, 39, 40 and 43 is improper and should be withdrawn in due course.

Claims 7 and 42 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kline in view of Savage as applied to claims 1, 37, 39, 40 and 43 above, and further in view of Fleury Jr. in U.S. Patent No. 4,326,530. For the reasons set forth above, Applicants respectfully submit that claims 1 and 39 are patentable over Kline and Savage. Fleury, Jr. does not overcome the shortcomings of the cited art. Consequently, Applicants respectfully submit that claims 1 and 39 are patentable over the combination of Kline, Savage, and Fleury, Jr., to the extent that such a combination is even possible. Because claims 7 and 42 depend from patentable claims 1 and 39, respectively, Applicants respectfully submit that these claims are also patentable over the cited art.

**Conclusion**

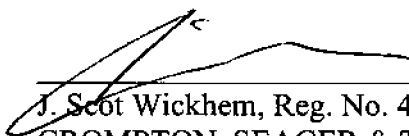
Reconsideration and further examination of the rejections are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

John A. Griego et al.

By their Attorney,

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